

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
CENTRAL DIVISION

In re:

CARMEN BAILEY

Debtor

Chapter 13

Case No. 09-44760-HJB

CARMEN BAILEY

Plaintiff

vs.

WELLS FARGO BANK, NA

Defendant

Adversary Proceeding No.

09-AP-04190

**PLAINTIFF'S MOTION TO COMPEL DISCOVERY RESPONSE**

Now comes the Plaintiff, Carmen Bailey, and moves pursuant to Fed. R. Civ. P. 37(a), made applicable by Fed. R. Bankr. P. 7026, for an order compelling a discovery response. Plaintiff states that Requests for Production of Documents were served upon the Defendant on January 29, 2010 and were thus due February 28, 2010, and no response has been served. A copy of the discovery request is attached hereto as Exhibit A.

**CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. Civ. P. 37(a)(1) the moving party certifies that he attempted in good faith to confer with opposing counsel in an effort to obtain the response without court action as follows: email and personal conversation at court. See copy of email response dated February 17, 2010 attached hereto as Exhibit B.

WHEREFORE Defendants move pursuant to Fed. R. Civ. P. 37(a) that the court enter an order compelling the Defendant to respond to said discovery and make complete production or inspection available of documents sought within 10 days of the hearing of this motion; and that the Court award Defendants their reasonable attorneys fees for bringing this motion pursuant to Rule

37(a)(5); and for such other and further relief as may necessary and permitted under Rule 37(b)(2)(A-C) and otherwise.

Respectfully submitted,  
By her attorney:

/s/ Michael J. Tremblay

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MICHAEL J. TREMBLAY BBO # 502133  
277 Main St.  
Marlborough, MA 01752  
Tel. 508-485-4500

### **CERTIFICATE OF SERVICE**

I, Michael J. Tremblay, do hereby certify that I have served the foregoing PLAINTIFF'S MOTION TO COMPEL DISCOVERY RESPONSE upon the parties listed below via electronic service this date:

Christine Murphy on behalf of Defendant Wells Fargo Bank, NA  
[cmurphy@harmonlaw.com](mailto:cmurphy@harmonlaw.com)

and to the parties listed in the attached list by first class mail.

Dated: March 10, 2010

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/S/ Michael J. Tremblay  
MICHAEL J. TREMBLAY bbo#502133  
277 Main St.  
Marlborough, MA 01752  
Tel. (508) 485-4500

Service list by mail:

p None

## **Exhibit A**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
CENTRAL DIVISION

In re:

CARMEN BAILEY

Debtor

Chapter 13

Case No. 09-44760

CARMEN BAILEY  
Plaintiff

vs.

WELLS FARGO BANK, NA  
Defendant

Adversary Proceeding No.

**PLAINTIFF'S REQUESTS FOR PRODUCTION OF DOCUMENTS  
AND OTHER THINGS PROPOUNDED TO DEFENDANT WELLS FARGO BANK, NA**

Pursuant to Bankr. R. 7034, you are hereby requested to produce for inspection, examination, copying, testing and sampling, as may be appropriate, the documents and things described below, at the offices of MICHAEL J. TREMBLAY, ESQ., 277 Main St., Marlborough, MA 01752, or at such other place as may be mutually agreed upon within thirty days. Legible copies of documents may be furnished with your response in lieu of physical production.

**DEFINITIONS AND INSTRUCTIONS**

These definitions should be construed to be consistent with Local Rule 26.5, United States District Court for the District of Massachusetts, as amended. For purposes of these requests,

- (a) **"Communication"** means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).
- (b) **"Document"** shall mean any kind of written or electronically stored information including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. A draft or non-identical copy is a separate document within the meaning of this term.
- (c) **"Plaintiff"** and **"Defendant"** as well as a party's full or abbreviated name or a pronoun referring to a party means the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, agents, servants, employees and any other person or entity acting on its behalf.

- (d) **"Person"** shall mean any natural person or any business, legal or governmental entity or association.
- (e) **"Concerning"** means referring to, describing, evidencing, or constituting.
- (f) These requests are directed to documents and things which are in your possession, custody or control, or the possession, custody, or control of your agents, attorneys, representatives, or persons acting on your behalf.
- (g) If any document requested herein is withheld in whole or in part on the basis of any asserted privilege, including the attorney-client privilege or the work-product doctrine, provide a log identifying each such withheld document including: (i) the nature of the privilege asserted; (ii) a description of the type of document, e.g., letter, report, or memorandum, (iii) the general subject matter of the document; (iv) the date of the document; and (v) such other information as is sufficient to identify the document for production by a subpoena duces tecum, including, where appropriate, the title, if any; the number of pages; the author(s), addressee(s), and intended recipient(s); the whereabouts and custodian of the original; and where not apparent the relationship of the author, addressees and recipients to each other.
- (h) Unless otherwise specified, the time period encompassed by this set of document requests shall be from February 24, 1992 through the present.

### **REQUESTS**

1. The original promissory note executed by Carmen Bailey to Shawmut Mortgage Company dated February 24, 1992 in the original principal amount of \$104,000.00 including all endorsements, assignments and memoranda of delivery to all holders, assignees and successors.

2. All communications concerning foreclosure or intended foreclosure sent to Carmen Bailey from January 1, 2008 to December 31, 2009 by Defendant, including delivery receipts or proof of delivery.

3. All communications concerning loan modification sent to Carmen Bailey from January 1, 2008 to December 31, 2009 by Defendant.

Dated: January 29, 2010

CARMEN BAILEY  
BY HER ATTORNEY:

/s/ Michael J. Tremblay  
MICHAEL J. TREMBLAY, BBO 502133  
277 Main St.  
Marlborough, MA 01752  
Tel. 508-485-4500  
Fax. 508-449-3969  
Email: [attorney@tremblay.com](mailto:attorney@tremblay.com)

## **Exhibit B**

RE: PTC Memo

**Subject:** RE: PTC Memo

**From:** "Christine A. Murphy" <[cmurphy@harmonlaw.com](mailto:cmurphy@harmonlaw.com)>

**Date:** Wed, 17 Feb 2010 14:20:49 -0500

**To:** <[attorney@tremblay.com](mailto:attorney@tremblay.com)>

Hi Mike,

I'm attaching the memo with my changes. I've got a 12 (b)(6) motion pending so I see no reason to conduct discovery at this point.

With respect to your request for documents, my client is not required to produce the original note. Further, I attached copies of the notices of sale to your client and proof of receipt docs in the Opposition to your client's motion for injunctive relief that I filed with the court.

Finally, any communications regarding a loan mod seem irrelevant to your client's complaint and I would object to them as irrelevant.

If you do not agree to file this joint memo deferring discovery until after the Motion to Dismiss is heard, I will file my portion on my own.

Finally, I am advising my client to consider a counterclaim against your client for negligent interference with a third party contract as the foreclosure sale was over four months ago and this litigation is preventing the closing with the third party.

Christine A. Murphy, Esq.  
Assistant Manager  
Litigation Department  
Harmon Law Offices, P.C.  
150 California Street  
Newton, MA 02458  
TEL (617) 558-8400 ext. 467  
DIRECT (617) 558-8467  
FAX (617) 244-7304 or (617) 243-4045

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-----Original Message-----

From: Mike Tremblay [<mailto:attorney@tremblay.com>]  
Sent: Wednesday, February 17, 2010 11:43 AM  
To: Christine A. Murphy  
Subject: PTC Memo

I am taking off tomorrow for a few days taking the kids skiing for school vacation week in Quebec. Just so I'm not behind the 8-ball when I get back next week with this PTC Memo that's due, I have started a draft and it is enclosed for your review. You can add in you content,

RE: PTC Memo

and email it back to me.

Also, if you have any discovery issues to discuss, let me know by phone today or tomorrow morning before I leave, or you can call me on my cell 508-259-6390 which should work even in Canada.

--Mike

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Atty. Michael J. Tremblay 277 Main St. Marlborough, MA 01752	Tel: 508-485-4500 Fax: 508-449-3969 <a href="mailto:attorney@tremblay.com">attorney@tremblay.com</a> <a href="http://www.attorney.tremblay.com">www.attorney.tremblay.com</a>
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	<b>Content-Type:</b> application/msword
	<b>Content-Encoding:</b> base64